United Brotherhood of Carpenters and Joiners of America Local Union No. 1597, AFL-CIO *and* The Ceco Corporation and Laborers International Union of North America, Local 252, AFL-CIO. Case 19-CD-412

5 July 1983

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of a charge by The Ceco Corporation, herein called the Employer, alleging that United Brotherhood of Carpenters and Joiners of America Local Union No. 1597, AFL-CIO, herein called Carpenters Local 1597, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work exclusively to employees represented by Carpenters Local 1597 rather than jointly to employees represented by Laborers International Union of North America, Local 252, AFL-CIO, herein called Laborers Local 252, and employees represented by Carpenters Local 1597, in accord with the Employer's established practice.

Pursuant to notice, a hearing was held before Hearing Officer S. Ruth Selden on 14 December 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer and Carpenters Local 1597 filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Based upon the entire record in this case and the briefs of the parties, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a Delaware corporation engaged in forming and shoring poured-in-place concrete at Bangor, Washington, the site of the dispute herein, and that during the past year it purchased and received goods valued in excess of $50,000 directly from outside the State of Washington. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and we further find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS

The parties stipulated, and we find, that Carpenters Local 1597 and Laborers Local 252 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

The Employer, a subcontractor on the administration building and the off-crew administration building project at the Bangor, Washington, naval base, is engaged primarily in the forming and shoring of poured-in-place concrete. As part of the performance of its responsibility, the Employer removes the objects into which the concrete is poured and prepares them for further use—the stripping of flat arches and the tearing of forms apart piece by piece, readying them for the next usage.

On 6 May 1982[1] James Kerlee, business representative for Carpenters Local 1597, observed the work described above being performed by a member of Laborers Local 252. He spoke with the foreman about assigning an apprentice carpenter to do the work. On the next day, when the foreman refused to assign the work to a carpenter, Kerlee sent a letter to the Employer alleging that the work was misassigned and stating, "Be further advised that I will not allow carpenter work to be accomplished by laborers."

Because the alleged misassignment continued, Kerlee, on 7 July, filed internal union charges against the carpenters working at the Employer's jobsite. On 14 July he sent a letter to the Employer informing it of this action. The letter asserted that the carpenters had violated the Carpenters constitution "by allowing the laborers to do work that is traditionally the work of the carpenter. . . . All five carpenters on the Cree Bangor project were given reprimands and placed on probation. . . . If this situation is not rectified immediately they will be bound over to a trial board which could result in their being expelled from the" Union.

Also, on 14 July, Kerlee sent a letter to the primary contractor, Cree Construction Co., Inc. He enclosed a copy of his 14 July letter to the Employer, and stated, "Should this situation persist this office will have little recourse but to exert

[1] All dates hereinafter refer to 1982, unless otherwise indicated.

some economic action that might possibly conflict with completion of your project in a timely manner." Cree forwarded the letter to the Employer. On 19 July the Employer wrote to Kerlee, claiming that stripping flat arches and tearing forms apart was traditionally work of laborers. The letter informed Kerlee that the Employer would continue to utilize composite crews of carpenters and laborers.

On 21 September representatives of both International Unions met to discuss the dispute, but failed to reach a resolution. On 6 October the Employer sent a letter to Kerlee informing him that it would continue to assign the work in question according to its established practice. On 16 November, referring to continuing threats by Carpenters Local 1597 against employees carrying out their assignments on the off-crew administration building, the Employer reiterated its intention to assign the work in issue to a composite crew of carpenters and laborers.

B. *Work in Dispute*

The work in dispute herein is the stripping of flat arches and the tearing of forms apart piece by piece, readying them for the next usage, at a jobsite located in Bangor, Washington.

C. *Contentions of the Parties*

Carpenters Local 1597 contends that the work in dispute should be assigned to employees it represents, arguing that area practice, an award of the Impartial Jurisdictional Disputes Board (IJDB), and carpenter familiarity with the work favor such a result. The Employer contends that area practice, economy and efficiency, a 1949 agreement between the Carpenters and Laborers International Unions, and its longstanding practice favor awarding the work in dispute to employees represented by Laborers Local 252 and Carpenters Local 1597 in accord with its practice of utilizing a composite crew of carpenters and laborers.[2]

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have no agreed-upon method for the voluntary adjustment of the dispute.

As set forth above, upon learning that the work in question was being performed by laborers, Carpenters Local 1597 informed the Employer that it would not allow carpenter work to be accomplished by laborers; when the alleged misassignment continued, Carpenters Local 1597 placed the carpenters working at the Employer's jobsite on probation and notified the Employer that the carpenters could be expelled if the alleged misassignment were not corrected immediately, and wrote to the primary contractor (who in turn notified the Employer of the Union's statements) stating that the Union might take economic action which could interfere with completion of the project, if the problem were not resolved. Based on the foregoing, and on the record as a whole, we find that Carpenters Local 1597 sought to force or require the assignment of the disputed work exclusively to employees represented by it. Accordingly, we find reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated.

As to whether an agreed-upon method exists for the voluntary adjustment of the dispute, we note that the parties stipulated that no method for the voluntary adjustment of the dispute has been agreed upon and that the Employer is not party to any joint board for the settlement of jurisdictional disputes.

Accordingly, we find that the dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors.

1. Certification and collective-bargaining agreements

The parties stipulated at the hearing that there are no relevant Board certifications. Accordingly, we find that this factor favors neither group of employees.

The Employer is party to a collective-bargaining agreement with Carpenters Local 1597 and to a collective-bargaining agreement with Laborers Local 252. No party seriously maintains that either agreement expressly covers the work in dispute. Based upon a review of the agreements, we find

[2] Although not entirely free of doubt, we find that the Employer's practice has been to assign the work in dispute to laborers and carpenters based upon the composition of the work force at the time the work was to be performed. We note, in particular, that Foreman Osborn, in response to a question regarding his past practice as to assignment of work between the two crafts, testified that "the laborers are to help strip material and bring it out forward, take care of the odds and ends. The carpenters erect it, grade it, and do the stripping too."

Laborers Local 252 appeared at the hearing, but did not file a brief. However, based on its position at the hearing, we believe that Laborers Local 252 is in agreement with what we gather the Employer's position to be.

that these documents are not helpful to a determination of this dispute.

2. Employer's past practice and preference

The record indicates that the Employer's practice has been to utilize composite crews. The record further indicates that the Employer has continued this practice at the Bangor jobsite by utilizing a composite crew of laborers and carpenters, assigning the disputed work to employees represented by either Laborers Local 252 or Carpenters Local 1597 based upon the composition of the crew at the time the work is to be performed, and that the Employer maintains a preference for this method of assignment. Accordingly, the factors of the Employer's past practice and preference favor award of the work in dispute to employees represented by both Unions in accord with the Employer's established practice of assignment.

3. Area practice

The Employer asserts that area practice is to assign the disputed work to composite crews of carpenters and laborers, and Carpenters Local 1597 claims that area practice supports awarding the disputed work exclusively to employees represented by it. Based on the record, we are unable to determine what the area practice is with respect to the work in question. Consequently, we find that this factor is not helpful in resolving the instant dispute.

4. Relative skills

The record indicates that both groups of employees can perform the disputed work. Therefore, this factor favors neither group of employees.

5. Past assignments and awards by private parties

The Employer argues that a 1949 memorandum of agreement between the Laborers and Carpenters International Unions specifically assigns the disputed work to laborers. Carpenters Local 1597 maintains that the disputed work is not the subject of the 1949 agreement. Further, Carpenters Local 1597 submitted documents, including an award of the IJDB dated 16 May 1980, which it claims awarded the disputed work to carpenters. We find the evidence concerning this factor conflicting and ambiguous, and, consequently, of no help in resolving the instant dispute.

6. Economy and efficiency of operations

The Employer's witnesses testified that with a composite crew containing laborers and carpenters the Company is able to maintain a constant work force of experienced employees. Utilization of such a work force provides the flexibility necessary to insure that work tasks are performed efficiently and economically. That is, with both carpenters and laborers on the crew, the Company is "able to put [employees] on one type of work at one time and some other type of work [at another time]." This avoids lost time caused when a work force must wait for someone to be sent by a hiring hall to perform a particular task. Further, the work performed by an experienced employee who has worked as part of a composite crew is generally more productive and satisfactory than the work of a 1-day hiring hall list employee. We therefore find that the factors of economy and efficiency of operations favor awarding the work in dispute to a composite crew of employees represented by both Unions in accord with the Employer's longstanding practice of assignment.

Conclusion

Upon the record as a whole, and after consideration of all relevant factors involved, we conclude that the work in dispute should be assigned to a composite crew of employees represented by Carpenters Local 1597 and Laborers Local 252. We reach this conclusion relying on the Employer's past practice, the Employer's preference, and the economy and efficiency of operations that will result from such assignment. In making this determination, we are assigning the work to employees represented by both Unions, but not to these Unions or their members. The determination of this case is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. Employees of The Ceco Corporation who are represented by Laborers International Union of North America, Local 252, AFL-CIO, and employees of The Ceco Corporation who are represented by United Brotherhood of Carpenters and Joiners of America Local Union No. 1597, AFL-CIO, working as a composite crew, are entitled to perform the work of stripping of flat arches and the tearing of forms apart piece by piece, readying them for the next usage, at the Bangor jobsite located in Bangor, Washington.

2. United Brotherhood of Carpenters and Joiners of America Local Union No. 1597, AFL-CIO, is not entitled by means proscribed by Section

8(b)(4)(D) of the Act to force or require The Ceco Corporation to assign the disputed work exclusively to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, United Brotherhood of Carpenters and Joiners of America Local Union No. 1597, AFL-CIO, shall notify the Regional Director for Region 19, in writing, whether or not it will refrain from forcing or requiring The Ceco Corporation, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.